

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES ALMANDO-MAURICE DUNBAR,

Defendant-Appellant.

FOR PUBLICATION

September 9, 2014

9:05 a.m.

No. 314877

Muskegon Circuit Court

LC No. 12-062736-FH

Advance Sheets Version

Before: METER, P.J., and O'CONNELL and SHAPIRO, JJ.

SHAPIRO, J.

This case arises out of an October 12, 2012 traffic stop during which police officers discovered contraband in defendant's pickup truck. Defendant moved to suppress the evidence of the discovered contraband on the grounds that the traffic stop violated his rights under the Fourth Amendment of the United States Constitution and Article 1, § 11 of the Michigan Constitution. The trial court denied the motion, and we granted defendant's application for leave to appeal. Because no traffic violation had occurred or was occurring, we reverse.¹

The Fourth Amendment guarantees "[t]he right of the people . . . against unreasonable searches and seizures" US Const, Am IV. "An automobile stop is . . . subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. . . . [T]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v United States*, 517 US 806, 810; 116 S Ct 1769; 135 L Ed 2d 89 (1996); see also *People v Kazmierczak*, 461 Mich 411, 420 n 8; 605 NW2d 667 (2000); *People v Davis*, 250 Mich App 357, 363-364; 649 NW2d 94 (2002).

The prosecution concedes that when the officers initiated the traffic stop they had no basis to believe that defendant was engaged in any criminal conduct. In addition, the officers testified that defendant was driving safely, they did not see him violate any traffic laws governing vehicle operation, and he did not engage in any suspicious behavior. They testified that the sole basis for the stop was their conclusion that defendant was violating a traffic law,

¹ We review de novo a trial court's ruling on a motion to suppress. *People v Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002).

MCL 257.225(2), which provides in pertinent part that “[a vehicle’s license] plate shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition.”² We conclude that the circumstances observed by the officers did not constitute a violation of this statute.

As noted, the officers testified that defendant was driving safely and lawfully when they stopped him. They explained that when they have no other matters to attend to on patrol, as a matter of course they randomly enter the license plate numbers of cars they are following, a practice that sometimes reveals that the driver is subject to an outstanding warrant. According to the officers’ testimony, they had difficulty reading one of the seven characters on the pickup’s license plate due to the presence of a trailer towing ball attached to the rear bumper. One of the officers testified that he was able to determine, while driving behind defendant, that the license plate number was either CHS 6818 or CHS 5818. It was, in fact, CHS 6818.

Common experience reveals that thousands of vehicles in Michigan are equipped with trailer hitches and towing balls. The prosecution argues, however, that the presence of that equipment behind a license plate is a violation of MCL 257.225(2) and, therefore, the officers had proper grounds to conclude that a traffic law was being violated. However, the mere presence of a towing ball is not a violation of MCL 257.225(2). The statute provides that “[t]he plate shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition.” (Emphasis added.) The statute makes no reference to trailer hitches, towing balls, or other commonly used towing equipment that might partially obscure the view of an otherwise legible plate. There is no evidence that *the plate* on defendant’s truck was not maintained free of foreign materials. There is similarly no evidence that defendant’s plate was dirty, rusted, defaced, scratched, snow-covered, or otherwise not “maintained” in legible condition. The plate was well lit and in essentially pristine condition. Moreover, the officers agreed that the plate was legible, a fact confirmed by the photos taken at the scene.

In this case, the officers did not have grounds to believe that defendant was in violation of MCL 257.225(2) and they, as well as the prosecution, agree there was no other basis for the stop. Accordingly, we reverse the trial court’s denial of defendant’s motion to suppress the contraband seized during an automobile search conducted in violation of the Fourth Amendment. *Whren*, 517 US at 809-810.

Reversed. We do not retain jurisdiction.

/s/ Douglas B. Shapiro

² As amended by 2014 PA 26. MCL 257.225(a) as amended by 1995 PA 129 was the version in effect at the time of the traffic stop, but it had only slight grammatical differences that do not affect the analysis.